IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/06/2003

CORAM

THE HONOURABLE Mr. JUSTICE P.K.MISRA
AND
THE HONOURABLE Mr.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION NO.3650 of 1999

M.A.Govindasamy ... Petitioner

-VS-

1.The Union of India, rep.,
by the General Manager,
Southern Railway,
Madras-3
2.Central Administrative Tribunal,
Chennai Bench, Chennai
... Respondents

Writ petition filed under Article 226 of the Constitution of India to issue writ of certiorari as stated therein.

!For petitioner ... Mr.V.Bhiman

^For respondents ... Mr.K.Ilango-for R1

:ORDER

(Order of the court was passed by P.K.MISRA, J.)

Writ petition is filed for the issuance of a writ of certiorari calling for the entire records in RA.No.31 of 1998 in O.A.No.1522/95 dated 11.11.1998 on the file of the Central Administrative Tribunal and quash the same.

2.Heard counsel appearing for the parties.

3. In this writ petition, the petitioner has challenged the order dated 11.11.1998 passed by the Central Administrative Tribunal, rejecting the Original Application No.1522 of 1995 filed by the present petitioner. In the said application before the Tribunal, the petitioner had prayed for a direction to treat the entire service as qualifying period of service for the calculation of pension,gratuity etc., The petitioner claimed that he had been initially appointed on temporary basis and the said temporary appointment continued without any break and ultimately the petitioner was con

firmed in the said service. Subsequently, he was retired in due course. While calculating the retirement benefits, the service rendered by the petitioner in temporary capacity was calculated at the rate of 50% as qualifying service for the purpose of pensionary benefits. The petitioner had claimed that the entire service including the period during which the petitioner was temporarily employed should be considered. The Tribunal has rejected such application on the ground that as per Railway Board's instructions dated 14.10.1980, only 50% of the temporary benefits on absorption as regular Railway employees and it is observed that merely because the full pension had been granted in respect of further process on erroneous basis, such benefit cannot be extended to the applicant.

4.Learned counsel appearing for the petitioner has drawn our attention to the service book of the petitioner. The relevant entry in the aforesaid service book relating to the petitioner indicates that the petitioner was appointed on temporary status 'Hamal' on completion of 6 months of continuous service and scale of pay was fixed at Rs.30-1 /2-35 plus allowances as admissible. It was further indicated that his service was temporary, he was deemed to be on probation. Subsequently, it appears that he was confirmed in service with effect from 1.1.1965. The other entries in the service book indicate that the period not qualifying for pension was 'nil'. Such entries are made for the period right from 1958 to 1965 and subsequently. In other words, even if initially service of the petitioner was temporary, the entire period was being considered as eligible for the purpose of pension. In the aforesaid factual background, learned counsel for the petitioner has invited out attention to the Rule 20 of Chapter III of Railway Services (pension) Rules 1993.

5.Learned counsel for the respondents on the other hand has submitted that the said Rule 20 would not be applicable, but Rule 31 of the said Rules would be applicable. Both the rules are relevant and they are extracted hereunder:-

"20.Commencement of qualifying service—Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity;

Provided that officiating or temporary service is allowed, without interruption, by substantive appointment in the same or another service or post:"

"31.Counting of service paid from Contingencies—In respect of a railway servant, in service on or after the 22nd day of August, 1968, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment, subject to the following conditions, namely:-

(a)the service paid from contingencies has been in a job involving whole-time employment;

(b)the service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned such as posts of malis, chowkidars and khalasis;

(c)the service should have been such for which payment has been made either on monthly rate basis or on daily rates computed and paid on a monthly

basis and which, though not analogous to the regular scales of pay, borne some relation in the matter of pay to those being paid for similar jobs being performed at the relevant period by staff in regular establishment;
(d)the service paid from contingencies has been continuous and followed by absorption in regular employment without a break;"
Apart from the above two rules, Rule 23 is also somewhat relevant to this case, which reads as follows:-
23.Counting of service on probation Service constituting period of a railway servant appointed as a probationer or on probation and also the last two years of apprenticeship period of Special Class Apprentice shall be treated as qualifying service."
6. A mere perusal of Rule 20 indicates that qualifying service, commences from the date of the taking charge of the post to which he was first appointed either substantively or in an officiating or temporary capacity. Similarly Rule 23 indicates that the period of probation of a Railway servant appointed as a probationer or on probation and also the last two years of apprenticeship period of Special Class Apprentices shall be treated as qualifying service. In our opinion, Rule 20 is squarely applicable to the case of the applicant and since he was appointed on temporary basis and subsequently confirmed, the entire period has to be counted for the purpose of calculating the pension, payable to the petitioner. This is also strengthened by the Rule 23, which indicates that the period of probation is also to be calculated for the purpose of calculating pension. If a person is appointed on temporary basis on regular scale of pay, it cannot be said that Rule 31 will be applicable for him.

7.Apart from the above aspect, the entries in the service book of the petitioner is apparent that from the beginning it is indicated that the entire period shall be calculated for the purpose of pension. Though he was initially appointed on temporary basis, subsequently he was confirmed without any break in the service.

8.Learned counsel for the respondents has also referred the circular issued in the year 1980. This circular cannot whittle down the scope of the rules and has no application to the present case.

9.Accordingly, the impugned order dated 11.11.1998 passed by the Central Administrative Tribunal is quashed and the writ petition is allowed. It is directed that the entire period from the date of initial appointment till the date of superannuation of the petitioner on temporary basis shall be calculated as qualifying service for the purpose of the pensionary benefits, gratuity etc., First respondent is directed that necessary calculation shall be made and the differential amount shall be paid within four months from the date of communication of this order. No costs.

Index:Yes
Website:Yes
tsv.

To

1.The General Manager,
Union of India,
Southern Railway,
Madras-3

2.Central Administrative Tribunal,
Chennai Bench, Chennai